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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

AUDIO SERVICES  
DIVISION

In re Application of )

SHELLEE F. DAVIS )

File No. BPH-911231MA

For Construction Permit for )  
New FM Broadcast Station on )  
Channel 280A, Westerville, Ohio )

To: Chief, Audio Services Division  
Mass Media Bureau

RESPONSE TO INFORMAL OBJECTION OF WTTF, INC.

Shellee F. Davis, by her attorneys, hereby respectfully  
submits her opposition to the "Informal Objection" filed by WTTF,  
Inc., licensee of Station WTTF-FM, Tifton, Ohio ("WTTF") in this  
proceeding.

WTTF confuses and misanalyzes the facts. Davis has  
proposed to construct a station utilizing a grandfathered Class A  
allotment. At the proposed transmitter site, under the  
Commission's former rules (when Class A stations were limited to a  
maximum 3 kW/100 meters), the allotment was not short-spaced to any  
other station, including WTTF-FM. The site is only "short-spaced"  
by virtue of application of the new spacing rules. Therefore, it  
is properly analyzed as a grandfathered allotment under Section  
73.213 of the Commission's rules. Davis' proposal is not short-  
spaced under the provisions of Section 73.213(c)(1) of the  
Commission's Rules.

Under the Commission rules, there are two provisions  
governing grandfathered facilities -- 73.213(c)(1) and  
73.213(c)(2). Section 73.213(c)(1) deals with the situations where

a grandfathered facility will not radiate more than the equivalent of a 3 kW/100 meter signal in the direction of the short-spaced facility. Section 73.213(c)(2) controls the situation where a grandfathered facility desires to upgrade its facility in the direction of the short-spaced station beyond that of a 3 kW/100 meter or equivalent facility.

In the direction of Station WTTF-FM (the only station with respect to which the Westerville allotment reference point is "short-spaced" when it is reviewed under the new 6 kW/100 meter spacing rules), Davis' application proposes only a 3 kW/100 meter operation along all radials in the direction of WTTF-FM. The proposal therefore complies with Section 72.213(c)(1) of the Commissions's rules, as revised. In directions other than toward WTTF-FM, Davis' proposal proposes a full 6 kW operation. This also is permitted, consistent with the Commission's treatment of other grandfathered short-spacing allotments.<sup>1</sup> Therefore, Davis'

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<sup>1</sup> Davis' proposal is acceptable, consistent even with the Commission's treatment of other types of grandfathered short-spacing allotments. See, e.g., Amendment of Part 73 of the Rules to Provide for an Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power for Class A FM Stations, 4 FCC Rcd 6375 (1989):

grandfathered short-spaced stations can be modified or relocated provided that the predicted 1 mV/m F(50,50) field strength contour is not extended toward the 1 mV/m contour of any other short-spaced station.

Id. at 6390 n.86 (emphasis added). The Report and Order noted that a grandfathered short-spaced station may "relocate, reduce antenna height, and/or employ a directional antenna in order to increase power" as long as it ensures that its predicted 1 mV/m F(50,50)

application is properly analyzed under Section 73.213(c)(1) of the  
rules and further, and complies with the policies underlying the  
~~and the treatment of applicants analyzing under the~~

of Section 73.213(c) of the Rules) were to be granted in the future, WTTF will remain free also to continue to take advantage of Section 73.213(c)(1) of the Rules, and move closer to the Channel 280A reference point as long as it complies simply with the old spacing requirements<sup>3</sup>. As seen in Attachment 1, this would allow Station WTTF-FM to move up to 1.16 kilometers in the direction of Davis' facility. In contrast, if one of the "fully-spaced" applications were to be granted, WTTF-FM would be obligated to use the more restrictive spacing requirements of Section 73.207, even in the direction of the "fully-spaced" Channel 280A/Westerville transmitter site, limiting the ability of WTTF-FM to move in the direction the Westerville facility so that it could move only .09 km in the direction of the Ohio Radio Associates/Westerville Broadcasting Company site. See Attachment 1.<sup>4</sup> Therefore, if WTTF is seeking to retain maximum future flexibility for future potential antenna relocations, it will be better off if Davis' (or one of the other similarly-situated applicants) applications were

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<sup>3</sup> The Commission's Rule states:

Each application for authority to operate and FM station of any class other than Class A must specify a transmitter site that meets the minimum distance separation requirements in this paragraph with respect to Class A stations pursuant to this paragraph...and meets the minimum distance separation requirements of §73.207 with respect to all other stations.

47 C.F.R. §73.213(c)(1).

<sup>4</sup> Alternatively, WTTF-FM could seek a "short-spaced site" under Section 73.215 of the Commission's rules.

to be granted.

Davis is proposing to use an existing site -- the site from which service on Channel 280A previously was provided. Since the Channel 280A/Westerville site is built and existing, it is environmentally and aeronautically preferable to any other site proposal as may be considered in this proceeding. Unlike certain other applicants' sites (i.e., Ohio Radio Associates and Westerville Broadcasting Company) the existing site also allows for city-grade coverage to the entire community of Westerville, the proposed community of license. Therefore, in light of the grandfathered nature of the Channel 280A, Westerville, Ohio allotment, there was no requirement for Davis to have proposed abandonment of the still-existing, former Channel 280A transmitter site and locate to a "fully-spaced" site under the new rules, or for her to propose service at a site which would provide less than full utilization of the Channel and provide less than full service to the public by proposing less than full permitted 6 kW service in all directions except to WTTF. In short, Davis' proposal will allow for maximum efficient use of the spectrum. ORA's and Westerville Radio Partners' proposals will not. WTTF's objections are misguided and misdirected. Davis' proposal is in full accord with Commission policy and precedent, and should be accepted.

WHEREFORE, it is respectfully requested that the  
"Informal Objection" filed by WTTF, Inc. be denied.

Respectfully submitted,

SHELLEE F. DAVIS

By: 

Dan J. Alpert

Her Attorney

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October 1, 1992

**ATTACHMENT 1**

## **Engineering Statement**

### **in Support of an Opposition to an Informal Objection**

prepared for  
**Shellee F. Davis**

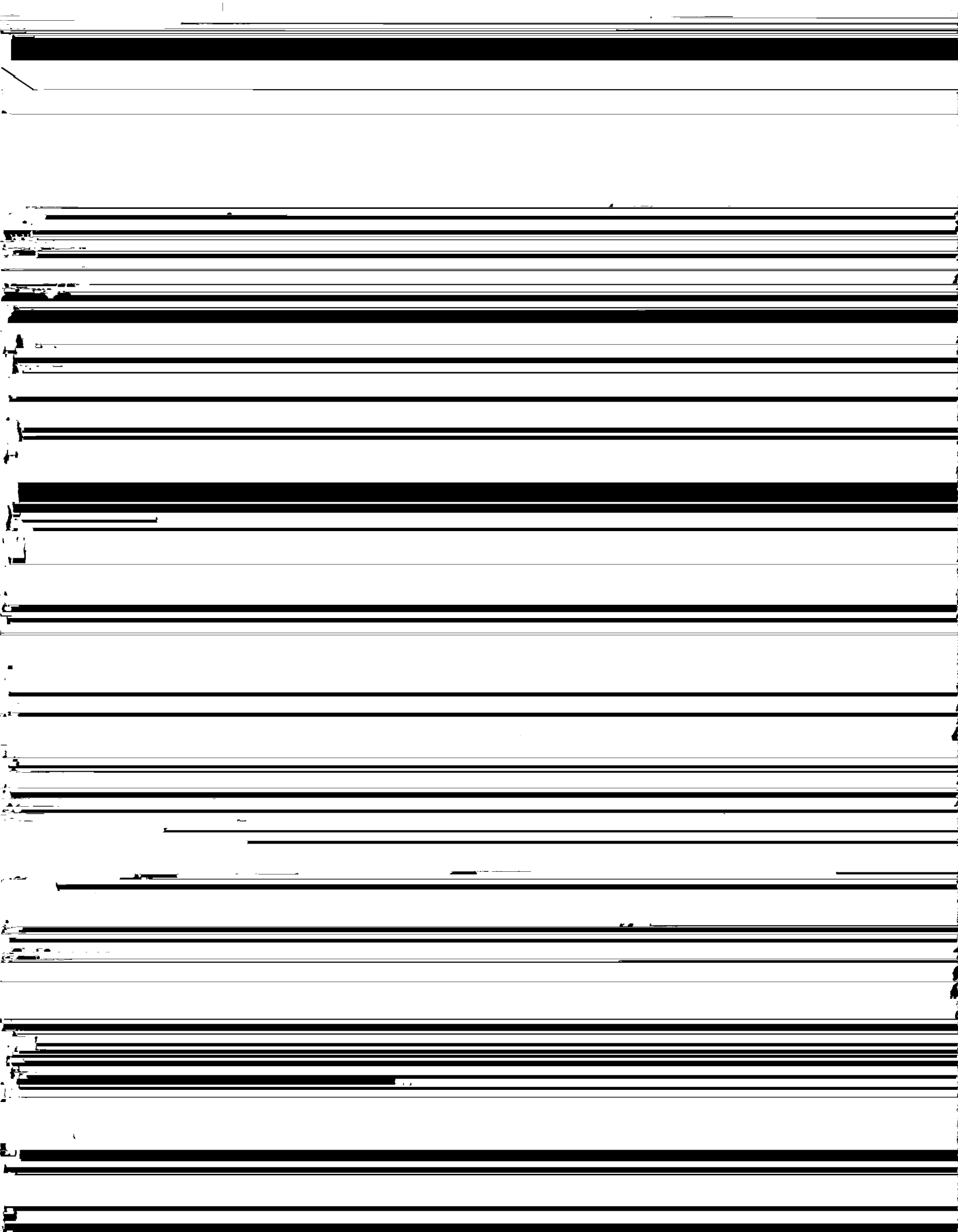
This statement has been prepared on behalf of Shellee F. Davis ("Davis"), applicant for a proposed new FM station to serve Westerville, Ohio in support of her opposition to the "Informal Objection" to her pending application filed by WTTF, Inc. ("WTTF"), licensee of WTTF-FM, Tiffin, Ohio.

WTTF asserts that a grant of Davis' application "may limit WTTF's ability to relocate its tower site or modify its facilities..." since the Davis proposal is "short-spaced" to WTTF under Section 73.207 of the FCC's Rules. WTTF also states that two other applicants in the Westerville proceeding are fully spaced under these Rules to WTTF, and thus implies that a grant of either of these proposals would permit more freedom of movement for WTTF. Based upon the belief that any potential relocation of WTTF would have limited were Davis to be granted, WTTF asked that Davis' application be dismissed.

The Davis proposal meets the requirements of §73.207 with respect to all existing or proposed facilities or allotments with the exception of WTTF-FM, which Davis acknowledged in her application. However, Davis has also demonstrated that her proposal did satisfy the inter-station spacing requirements of §73.213(c)(1). Processing the Davis proposal under the provisions of §73.213(c)(1) with respect to WTTF is appropriate since the allotment for Westerville was proposed prior to October 2, 1989. The allotment reference point, which is in fact the Davis site, met the separation requirements of Section 73.207 as they existed prior to October 2, 1989 and only became "short-spaced" to WTTF by virtue of the §73.207 rule change.

As such, this proposed Davis site remains fully-spaced under §73.213(c)(1) with respect to WTTF-FM. Accordingly, Davis is proposing an operation at the allotment reference point which radiates 3 kW ERP (at 100 meters) toward WTTF-FM (as if the Davis proposal were only a 3 kW station under §73.213).





I hereby state under penalty of perjury that I am a principal in the engineering firm of Suffa & Cavell, Inc., regularly engaged in the preparation of technical studies and exhibits submitted to the Commission, that my qualifications are a matter of record with that agency, that this statement was prepared by myself or under my direction, and that all statements contained herein are true and correct to the best of my knowledge and belief, and as to information provided by others, I believe them to be true.

September 30, 1992

  
Garrison C. Cavell

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Consulting Engineers  
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**CERTIFICATE OF SERVICE**

I, Dan J. Alpert, hereto certify that the foregoing was served by First Class Mail to the following parties:

Miller & Miller  
1990 M Street, NW  
Suite 760  
Washington, DC 20036



Dan J. Alpert